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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/088,707 06/02/98 BERTELO

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023599 IM22/0716
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EXAMINER

MULLIS, J	
ART UNIT	PAPER NUMBER

1711
DATE MAILED:

16
07/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

09/088,707

Applicant(s)

BERTELO ET AL.

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 36-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34, 36-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 14) ☐ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 17) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other:

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All remaining rejections and/or objections follow.

Claims 5, 6, 9, 10, 53 and 54 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The term "type" as recited in at least claims 5, 6, 9, 10, 53 and 54 renders the claims unclear in that it cannot objectively be determined when something is of the type of another..

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

49-70 Claims 1-34 and 36-70 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wu et al. (USP 5,346,954) or Dunkle (USP 4,659,767), optionally in view of Aoyama et al.

See the previous Office action at page 4 line 3 et seq.

Applicants' arguments filed 4-26-01 have been fully considered but they are not deemed to be persuasive.

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Applicants argue that the references do not disclose or suggest the use of a core/shell impact additive with a core comprising a nucleus and a covering as defined in claims 1 and 28. However it is not clear which features of claims 1-34 and 36-48 applicants are alleging are not taught or suggested by the prior art. Both Dunkle and Wu et al. disclose diacrylate cross-linkers (embraced by applicants' divinyl cross-linkers) and both disclose allyl moiety containing monomers in the core. Both references disclose graft linking monomers and the formation of a shell.

With regard to claims 49-68, both references Wu et al. and Dunkle et al. disclose N-alkyl acrylate cores which may contain C₅ alkyl acrylates. Note for instance Dunkle et al. at column 3 lines 53-57 and Wu et al. at column 3 lines 30-33. Note also that column 3 lines 30-35 of Wu et al. discloses that aside from the acrylate polymer, cross-linker and graft linker monomer are added. Divinyl cross-linkers are disclosed in Wu at column 7 lines 60-65 and applicants' diallyl maleate graft linker is disclosed at column 8 line 10. The prior art therefore clearly suggest applicants' core of these claims. The same can be said with regard to claims 69 and 70.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory

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period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc

July 13, 2001

Jeffrey Mullis
Primary Examiner
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A handwritten signature in black ink, consisting of a large, stylized 'J' and 'M' intertwined.